



**The Treasurer and Receiver General  
of the Commonwealth of Massachusetts**

# **REQUEST FOR RESPONSES**

**LEGAL SERVICES RELATED TO THE ISSUANCE OF DEBT**

**August 31, 2011**

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**Separately Posted Exhibits:**

- Exhibit A** Commonwealth Terms and Conditions
- Exhibit B** Invest in Massachusetts Data Form
- Exhibit C** Treasury Supplier Diversity Program Plan Form
- Exhibit D** Commonwealth Capital Spending Report

<p style="text-align: center;"><b>PART 1</b></p> <p style="text-align: center;"><b>ADMINISTRATIVE PROVISIONS</b></p>
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- I -

## INTRODUCTION

### A. Summary and Purpose

Steven Grossman, the Treasurer and Receiver General of the Commonwealth of Massachusetts (the “State Treasurer”), on behalf of the the Department of the State Treasurer (the “Treasury”) and agencies under the Treasury (“Treasury Agencies”) is seeking responses (“Responses” or a “Response”) to this Request for Responses (“RFR”) from law firms or individual attorneys who specialize in legal matters pertaining to the issuance of debt (in each case called herein a “Firm” or “Firms”) that are interested in presenting their qualifications to provide legal services related to the issuance of municipal securities by the Commonwealth of Massachusetts and Treasury Agencies. The State Treasurer intends to select, from the Responses, one or more qualified Firms that will be selected on an *as needed* basis to provide legal services in each of the following areas:

- \* Bond Counsel
- \* Commercial Paper Liquidity Counsel
- \* Disclosure Counsel
- \* Derivatives Counsel
- \* Underwriters’ Counsel

Firms responding to this RFR may submit Responses with respect to any number of the above categories it desires. Any one Firm may ultimately be selected in more than one category for which it submits a Response. Firms currently providing such services to the Commonwealth are requested to submit responses pursuant to this RFR.

It is the intent of this RFR to independently select groups of Firms qualified to provide services with respect to each category. As each category will be reviewed and selected separately based upon the submissions for each category, there can be no assurance that any Firm chosen to be a part of a particular group will be requested to provide services in another category. The use of Firms will be on an as needed basis. A Firm should not interpret a pre-qualification pursuant to this RFR as a promise or commitment to be engaged for any legal services.

In addition to the Commonwealth, Treasury Agencies, including the Massachusetts Water Pollution Abatement Trust, may also use the legal services of Firms qualified under this RFR. Such Treasury Agencies may, alternatively, separately procure one or more categories of services.

### B. Procurement Authority of the Treasury

The Treasury is exempt from the Commonwealth’s procurement regulations found at 801 CMR § 21.00. But, for purposes of this procurement, the Treasury has opted to follow the procurement regulations to the extent that

they do not conflict with any other applicable law or statute or applicable court rule and except as limited by Treasury policy. The Treasury will conduct itself as a “procuring department” as that term is used in 801 CMR 21.00 which provisions are otherwise incorporated herein by reference. Additional definitions may also be identified in this RFR.

### **C. Background on the Department of the State Treasurer**

Article LXII of the Massachusetts Constitution empowers the Legislature to borrow money on the credit of the Commonwealth. This authority is delegated to the State Treasurer pursuant to Chapter 29 of the General Laws. This authority is carried out by the Treasury’s Debt Management Department, which is responsible for borrowing the funds needed to operate Massachusetts state government efficiently, accounting for and managing all of the Commonwealth’s outstanding debt obligations, and providing timely repayment to investors.

The Commonwealth’s borrowing needs are regular and recurring, consistent with the borrowing patterns of most large states, including both short-term and long-term borrowings. Treasury is responsible for short-term borrowings that are needed to enhance the Commonwealth’s cash position throughout the fiscal year due to the uneven receipt of tax revenues and federal grants over the twelve-month fiscal year. Short-term borrowings include the sale of fixed-rate revenue anticipation notes (or “RANs”) as well as the issuance of commercial paper. Because these borrowings are for operations, all fixed-rate RANs and commercial paper issued as RANs are repaid by the end of the fiscal year.

The Treasury also issues long term debt to finance the state’s capital budget by selling Commonwealth bonds to investors. The capital budget is developed over a five-year horizon by the Executive Office for Administration and Finance (A&F) and is made up of expensive infrastructure projects, which require large up-front outlays. These projects include roads, bridges, state office buildings, prisons, and other facilities. The amount of borrowing done annually and how bond proceeds are spent annually is determined by A&F. Debt financing allows the Commonwealth to make capital investments in long-term public infrastructure with repayment occurring over the useful life of the asset; this spreads the burden of repayment over the state budgets during which the asset was utilized. Long-term borrowings are typically large and involve pledging the state’s taxing powers.

Based on recent legislative bond authorizations and A&F’s five-year Capital Investment Program, Treasury expects to issue approximately \$2 billion in new bonds per year over the next five years. Cash flow requirements for the state’s operating budget may also require the sale of approximately \$1 billion per year in short-term notes and commercial paper to ensure that the Commonwealth’s liquidity remains strong.

The Commonwealth currently has liquidity support for a \$200 million commercial paper (CP) program for general obligation notes, through a line of credit. Although the Treasurer intends to use the CP program routinely for bond anticipation notes, the use of that program is also dependent upon deficiencies in operating cash flow. Therefore, it is not possible to predict with any certainty the level of CP use.

For a more detailed description of the Treasury’s financing needs and other operating information, see the Commonwealth’s most recent Official Statement for the \$469,635,000 General Obligation Bonds Consolidated

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Loan of 2011, Series B & C, available on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access website (herein referred to as "EMMA").



- II -  
**GENERAL INFORMATION**

**A. Specifications**

1. Communication by Firms. Firms that intend to submit a response are prohibited from contacting any employees of the Treasury and the Commonwealth, including the Massachusetts Water Pollution Abatement Trust, the Massachusetts School Building Authority, A&F, the Department of Environmental Protection, or any member of any Procurement Management Team (PMT), other than the RFR Contact Person identified above. An exception to this rule applies to individuals or firms that currently do business with the Treasury or the other offices above, but must be strictly limited to that existing business, and must not relate to this RFR. ***Failure to observe this rule will result in disqualification.*** Furthermore, no other individual Commonwealth employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFR. Firms should notify the RFR Contact Person by email in the event this RFR is incomplete or the Firm is having trouble obtaining any required attachments electronically through Comm-PASS.

2. Reasonable Accommodation. Firms that have lawyers with disabilities or hardships that seek reasonable accommodation, which may include the receipt of RFR information in an alternative format, must communicate such requests in writing to the RFR Contact Person. Requests for accommodation will be addressed on a case-by-case basis. A Firm requesting accommodation must submit a written statement, which describes the disability of person in question and the requested accommodation to the RFR Contact Person. The Procurement Management Team (PMT) reserves the right to reject unreasonable requests.

3. Public Records. All Responses, including all attachments and information submitted, are subject to the Massachusetts Public Records Law, Massachusetts General Laws (M.G.L.), Chapter 66, Section 10, and Chapter 4, Section 7, Clause Twenty-Sixth. **Any statements in submitted Responses that are inconsistent with these statutes will be disregarded.** Firms are advised that all Responses are deemed sealed, and therefore their contents will be treated as confidential and will not be disclosed to competing Firms until the evaluation process has been completed and the contract has been awarded.

4. Submission of Response Materials and Oral Presentation. All materials, representations and submissions made within the Response and at the oral presentation are subject to becoming part of the contract binding the selected Firm to uphold the materials, representations and submissions made within the Response and at the oral presentations.

5. Estimated Provisions. The Treasury makes no guarantee that any services will be purchased under any contract resulting from this RFR. Any estimates and/or past or current procurement volumes referenced in this RFR are included only for the convenience of Firms, and are not to be relied upon as any indication of future purchase levels.

6. Conflict of Interest. Prior to award of any contract and/or qualification of Firms, Firms shall certify in writing to the Treasury that no relationship exists between the Firm and Treasury that interferes with fair

competition or is a conflict of interest, and no relationship exists between the Firm and another person or organization that constitutes a conflict of interest with respect to a state contract. The Treasury may waive this provision, in writing, if these activities of the Firm will not be adverse to the interests of the Treasury or the Commonwealth. Firms must provide assurance that it presently has no interest and shall not acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder. Firms shall also provide assurances that no person having any such known interests shall be employed during the performance of any contract arising from this RFR.

7. Restriction on the Use of the Commonwealth Seal. Firms are not allowed to display the Great Seal of the Commonwealth of Massachusetts in their Response or in any subsequent marketing materials if they are awarded a contract. Use of the coat of arms and the Great Seal of the Commonwealth for advertising or commercial purposes is prohibited by law.

8. Best Value Selection and Negotiation. The Procurement Management Team and/or the State Treasurer will select the Response(s) that demonstrates the "Best Value" overall, including proposed alternatives that will achieve the procurement goals of the Treasury. The determination of "Best Value" is at the sole discretion of the Procurement Management Team and/or the State Treasurer. The Procurement Management Team and/or the Treasury and the selected Firms may negotiate a change in any element of contract performance or cost identified in the original RFR or the selected Firms' Response which results in lower costs or in a more cost effective or better value than was presented in the selected Firm's original Response.

9. Reimbursement of Costs. Out-of-pocket costs and expenses will not be compensated under any contract awarded pursuant to this RFR. The Treasury will not be responsible for any costs or expenses incurred by Firms responding to this RFR.

10. Comm-PASS. This RFR has been distributed electronically using the Comm-PASS system. RFR Exhibits and other attachments that are referenced herein are available at the Comm-PASS "Solicitations" page for this RFR under the "Forms and Terms" tab at:

[www.comm-pass.com](http://www.comm-pass.com).

Firms are solely responsible for obtaining and completing required attachments that are identified in this RFR and for checking Comm-PASS for any addenda or modifications that are subsequently made to this RFR or attachments. The Commonwealth and the Treasury accept no liability and will provide no accommodation to Firms that fail to check for amended RFRs and submit inadequate or incorrect responses. Firms are advised to check the "last change" field on the summary page for this RFR to insure that they have the most recent RFR files. Firms may not alter (manually or electronically) the RFR language or any RFR component files. Modifications to the body of this RFR, specifications, terms and conditions, which change the intent of this RFR are prohibited and may disqualify a response.

11. Change in Terms. The Treasury may modify the specifications identified in this RFR at any time prior to the Response Deadline Date. The Treasury may negotiate with the selected Firm(s) as to any element of cost or

performance, including without limitation, elements identified in this RFR and/or the selected Firm's Response, in order to achieve the best value for the Commonwealth. The Treasury may request from any Firm a "best and final offer" as to the Firm's Response to Section V (Cost Proposal).

12. Termination or Suspension. Once retained, a Firm's service may be terminated or suspended from the Treasury's contract for poor performance, failure to perform, fraud or other cause at any time. Firms may be terminated from the contract without cause with sixty (60) days prior written notice. The Firm may not terminate the contract or performance except upon a minimum of 120 days written notice to the Treasury.

13. Permits and Compliance. Firms shall comply with all applicable laws, ordinances, rules, orders and regulations related to the performance of the services solicited.

14. Rejection of Responses. The Treasury may reject any and all Responses submitted under this solicitation.

15. Fees Subject to State Treasurer Signatory Authorization. All fees must be approved by the State Treasurer or his designee and are subject to verification of performance.

16. Subcontracting Policies. The legal services to be procured under this RFR shall not be sub-contracted or performed under any joint-venture agreement or similar arrangement without the specific written approval of the State Treasurer.

17. Transitions. If at any time a contract is canceled, terminated, or expires and a contract is subsequently executed with a Firm other than the Firm originally engaged, that Firm has the affirmative obligation, and agrees to assist in the smooth transition of contract services to the subsequent Firm.

18. Pricing: Price Limitation. The Firm must agree that no other customer of similar size and similar terms and conditions shall receive a lower price for the same service during the contract period, unless this same lower price is immediately effective for the Treasury. The Firm must also agree to provide current or historical pricing offered or negotiated with other governmental or private entities at any time during the contract period upon the request of the Treasury's General Counsel.

19. Security Breach Law, M.G.L. c. 93H. The Firms hereby acknowledge and agree to comply with the requirements and responsibilities, including those of providing notice and response, as set forth in G.L. c. 93H concerning Security Breaches and any regulations implemented to effectuate security of "personal information" as defined in § 1 of G.L. c. 93H.

20. Miscellaneous.

- a. All responses must be presented using the same numbering and ordering sequence used in this RFR or as otherwise specified, re-stating the question before the Firm's answer.

- b. Responses must remain in effect for at least 90 days from the submission deadline and thereafter until either the Firm withdraws the response in writing, a contract is executed or the procurement is canceled, whichever occurs first.
- c. Any Firm awarded a contract under this RFR is prohibited from selling or distributing any information collected or derived from the contract and/or procurement process, including lists of Treasury employee (including Treasury employees working for Treasury Agencies) names, telephone numbers, addresses, or other identifying information.
- d. Each Procurement Management Team appointed under this RFR reserves the right to modify, amend or cancel the terms of this RFR at any time.
- e. News releases pertaining to this RFR or any part of the RFR shall not be made without prior written approval of the Treasury.

## **B. Procurement Calendar**

1. Schedule. The following is the tentative time schedule for the Treasury's selection of qualified Firms under this RFR. All dates are subject to change by the Treasury with notice on Comm-PASS.

Date of Issuance of RFR:	August 31, 2011
Deadline for Submission of Questions:	September 9, 2011
Responses to Questions:	September 14, 2011
RFR Response Deadline:	September 21, 2011
Oral Presentation Period (if necessary)	September 26, 2011 through September 30, 2011
Approximate Selection Dates	Week of October 3, 2011

## **C. Instructions For Submission of Responses**

1. Response Package. Firms' Response packages shall include: (a) one original signed copy of the cover letter required by the introductory paragraph of Section IV (Phase Two Review; Scope of Services and Response Requirements), plus the Response itself and all attachments (unbound and ready to be photocopied and clearly identified as "Original" – **but not including the Cost Response**), (b) six left side bound photocopies of the foregoing originals, (c) a CD of the foregoing originals and (d) a separately packaged Cost Response, comprised of an unbound original, six left side bound photocopies of the original, and a CD of the original. The Response package must be delivered in one sealed container holding two separate packages, no later than 4:00 P.M EDT on the RFR Response Deadline date (see Procurement Calendar above).

**Note:** The Cost Response must be submitted in a separate sealed envelope in the Response package.

**Failure to comply with this requirement will result in disqualification of the Response.**

Responses received after the deadline will not be evaluated. An emailed or facsimile Response will not qualify as a “submission” for deadline purposes in advance of or in lieu of a hard copy submission. Responses and attachments are to be delivered to the RFR Contact Person listed above.

2. **Questions.** Questions concerning this RFR must be submitted to the RFR Contact Person identified above by email (no phone calls) before 3:00 p.m., EDT, on the Deadline for Submission of Questions (see Procurement Calendar above). The subject line of the email must state: “Question(s) Regarding Legal RFR.” In the body of the email a Firm must specifically reference the page and section of the RFR with which they have a question. Written responses to questions and clarifications will be posted on Comm-PASS on or before the Response to Questions date (see Procurement Calendar above).

3. **Complete Response.** All terms, conditions, requirements, and procedures required by this RFR must be met and all attachments must be included for a Response to be qualified as responsive. A Response that fails to meet any material term, condition, requirement, or procedure of this RFR may be deemed unresponsive and disqualified. The Treasury reserves the right to waive or permit cure of any non-material errors or omissions. The determination of “non-material” is at the sole discretion of the Treasury. The Treasury reserves the right to request additional information from Firms responding to this RFR. Additionally, upon reviewing the Responses a Procurement Management Team may decide to have certain Firms make oral presentations.

4. **Reserved Rights.** The Treasury reserves the right to reject any and all Responses to this RFR, to waive any minor informality in a response, to request clarification of information from any Firm responding, and to effect any agreement deemed by the Treasury to be in the best interest of the Commonwealth or the Treasury with one or more of the Firms responding. The Treasury reserve the right to amend or cancel this RFR at any time.

5. **Ownership and Intellectual Property Rights.** All Responses and their contents will become the sole property of the Commonwealth upon receipt. The Commonwealth will not accept or recognize any copyright or patent claim with respect to any Firm’s methods, processes, or analyses or in any representations of such methods, processes, or analyses that are included in its Response

**D. Disqualification Of Responses**

1. **Late Responses.** Responses that are received after the deadline date and time shall be automatically disqualified.

2. **Nonresponsive Responses.** Responses which are not responsive or which fail to comply with mandatory requirements of the RFR shall be deemed nonresponsive and shall be disqualified. Nonresponsive Responses shall include, but not be limited to, those answers to questions that fail to address or meet any mandatory item,

and those submitted in insufficient number, or in incorrect format.

3. Collusion. Collusion by two or more Firms agreeing to act in a manner intended to avoid or frustrate fair and open competition is prohibited and shall be grounds for rejection or disqualification of a Response or termination of this contract.

4. Debarred Firms or Subcontractors. A Firm that is currently subject to any Commonwealth or federal debarment order or determination, shall not be considered for evaluation by any Procurement Management Team. If a Firm's Response is dependent upon the services of a named subcontractor and the disqualification of this named subcontractor would materially alter the Response, then that Response shall be deemed unresponsive if the named subcontractor is found to be debarred. Responses that indicate that subcontractors will be used but do not rely on any specifically named subcontractor shall not be deemed unresponsive if the disqualification of a proposed subcontractor will not materially alter the Response.

## **E. Evaluation Process**

The RFR evaluation process will be conducted in three phases.

1. Phase One Review. A review team consisting of Treasury staff will complete the Phase One Review for all Responses. The purpose of the Phase One Review is to eliminate any bids that are nonresponsive to the requirements of the RFR. Firms responses will be reviewed based on the completeness of the Response, including mandatory attachments and compliance with the Instructions for Submission of Responses at Section II.C. Responses that do not comply with these requirements will be rejected and will not proceed to Phase Two review.

2. Phase Two Review. Responses that are deemed to be qualified based on the Phase One Review will be submitted to a Procurement Management Team for additional review. A Procurement Management Team will be appointed for each category of legal engagement under this RFR. Responses will be evaluated and scored on the basis of the Evaluation Criteria listed below in Section II.F. The Phase Two review will also include any oral presentation requested by the Procurement Management Team. The Procurement Management Team may adjust a Firm's score upwards based on any clarification of its Response at any oral presentation. (see Section II.G. - Oral Presentations). The Phase Two review will count for 80% of each Firm's score.

3. Phase Three Review. Cost will be evaluated by the Procurement Management Team in a separate meeting after the Phase One and Two reviews have been completed, including any oral presentation. The Phase Three review will count for 20% of a Firm's score. The successful Firms will be those Firms deemed to provide the "best value" overall and achieve the procurement goals of the Treasury, as defined by the Treasury.

4. Recommendation. Based on the Phase One, Two, and Three reviews, each Procurement Management Team will make a recommendation to the State Treasurer. The State Treasurer will then accept or reject the recommendation.

## **F. Evaluation Criteria**

The selection of Firms under this RFR will be based on written responses to this RFR, **including the separately bound Cost Response**, any oral interviews, references, and, if necessary, the Treasury's independent inquiry of matters in a Firm's Response or in the public record. The submitted Responses will be evaluated on the answers provided to the questions in Response Requirements of Section IV, and the submitted Cost Proposal of Section V. In evaluating the foregoing, each Procurement Management Team will consider the following:

- Has the Firm demonstrated in its Response that the Firm, and each of the attorneys that will provide legal services to the Treasury, has the ability, formal qualifications, experience, legal knowledge, technical competence, and resources necessary to work effectively with the Treasury to accomplish the tasks and goals of the engagements contemplated by this RFR?
- Has the Firm demonstrated in its Response that the Firm, and each of the attorneys that will provide legal services to the Treasury, has a strong understanding of Treasury needs, the process of issuing Commonwealth debt, and the requirements and nuances of applicable Massachusetts laws, the Massachusetts Constitution, and federal securities and tax law?
- Has the Firm demonstrated in its Response that the Firm, and each of the attorneys that will provide legal services to the Treasury, has the necessary experience providing legal services to State-level issuers similar to the Commonwealth?
- Has the Firm demonstrated in its Response that the Firm is willing and able to provide excellent and cost-effective levels of service to the Treasury in a collaborative relationship with the Treasury's legal and managerial staff?
- Has the Firm demonstrated in its Response that it can and will undertake any engagement that arises from this RFR with a high level of skill and integrity?
- Has the Firm demonstrated in its Cost Response that it is willing and able to provide high quality legal services at a very competitive price?

A recommendation to the State Treasurer by a Procurement Management Team will be based on the evaluation of a Firm's Response using the above criteria.

## **G. Oral Presentations**

As part of the Phase Two review, the Procurement Management Team shall have the option to invite Firms to make oral presentations. Oral presentations provide the Procurement Management Team with an opportunity to evaluate a Firm through the presentation of their Response. The Procurement Management Team may limit the number of oral presentations conducted. Firms will not be informed of their rank at the time of the oral presentations.

The time allotments and the format shall be the same for all oral presentations. The Procurement Management Team will give notice of at least two (2) business days prior to the date of an oral presentation. The Procurement Management Team may waive the location and medium requirements of an oral presentation upon the written request of a Firm due to special hardships, such as a Firm with disabilities or limited resources. In these circumstances the Procurement Management Team may conduct oral presentations through an alternative written or electronic medium (e.g., telephone, video conference, TTY or Internet). The Procurement Management Team will require that the Firm send the Firm Signatory to lead the oral presentation. Other key personnel assigned to the engagement should also attend, but no more than a total of 4 persons.

A Firm will be permitted to make a brief presentation, which may be summarized in written materials, after which the Procurement Management Team will ask questions for the remainder of the time set. Any written material will be limited to the substance of the materials contained in the Firm's Response, with the limited exception that a Firm may address specific questions posed by the Procurement Management Team as part of the oral interview or provide clarification of information contained in its Response. Any correction or modification of the Response or the presentation of supplemental information shall be considered prejudicial to the interests of other Firms and fair competition and shall not be permitted. A Firm's attempt to submit such corrections, modifications or supplemental information during an oral presentation may subject the Firm's Response to disqualification. A Firm's failure to agree to an oral presentation may result in disqualification from further consideration. Only written materials may be distributed and used at the oral presentation.

## **H. Components Of Procurement**

Duration And Renewal Options. The Treasury intends to select Firms for a three (3) year qualification list for the services solicited in this RFR. The Treasury may, at its option, extend any contract for an additional one year, under the same or better terms and conditions as negotiated.



### **III.**

#### **PHASE ONE REVIEW**

#### **Legal Requirements And Mandatory Attachments**

The Phase One review will entail an examination of the Response package to determine whether it is complete and responsive. The Response Package must include (1) the Legal Requirements and Mandatory Attachments listed below, (2) the Firm's answers to the questions and other requirements in Section IV (Scope of Services/Response Requirements), and (3) a separately packaged Cost Response (see Section V). Failure to submit a complete Response package will result in the disqualification of the Firm in the Phase One review.

#### **A. Legal Requirements**

1. Firm Signatory. All documents to be signed on behalf of the Firm must be signed by an attorney in the Firm (the "Firm Signatory") who is (a) authorized to contractually bind the Firm to the requirements of this RFR and any contract resulting from this RFR, (b) authorized to make, on behalf of the Firm, the certifications and disclosures herein, (c) a member in good standing of the Massachusetts Bar, (d) listed among the attorneys in the "Municipal Bond Attorney's Section" of The Bond Buyer's Municipal Market Place (i.e., the "Red Book"), and (e) identified by his or her title within the Firm next to or under his or her signature. The Firm Signatory will be the primary contact person at the Firm.

2. Attached to this RFR as Appendix I is a Legal Certification and Disclosure Statement that each Firm submitting a Response must complete and have signed by the Firm Signatory.

**Failure to complete and properly sign the Legal Certification and Disclosure Statement shall disqualify a Firm under this RFR.**

#### **B. Mandatory Attachments**

The Firm's Response package must include (a) the Response Requirements listed in the introductory paragraph to Section IV (Phase Two Review; Scope of Services and Response Requirements) below and (b) the following completed mandatory attachments:<sup>1</sup>

1. Professional Liability Insurance. Include with your Response at Appendix 4 (Firm Resumes and Other Attachments) proof of your Firm's legal malpractice coverage and the nature and amounts of the coverage. Please note any exclusions, including any exclusions that may be triggered by the terms and conditions of this RFR. The Firm's professional liability insurance must be in an amount of at least \$50,000,000 per claim.

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<sup>1</sup> These documents can be found under the Comm-PASS "Forms and Terms" tab on the "Solicitations" page for this RFR at the Comm-PASS website at: [www.comm-pass.com](http://www.comm-pass.com)). These documents may be downloaded and printed for you to complete and submit with your response. If you do not understand these instructions or you require additional assistance, please contact the comm-PASS help desk at 1-888-627-8283.

Please list any pending claims or disputes relating to prior opinions as bond counsel or other counsel. Firms malpractice insurance coverage must cover matters occurring during the engagement contemplated by this RFR for the period covered by the applicable statute of limitations. Firms agree to give notice to Treasury in the event the amount of malpractice insurance is canceled. Firms agree that no claim by Treasury for damages resulting from breach of a Firm's duties to Treasury in connection with the engagement shall be limited to the amount of malpractice insurance maintained by the Firm.

2. Equal Employment Opportunity. Include with your Response as Appendix 4 (Firm Resumes and Other Attachments) a complete copy of your Firm's equal employment opportunity and affirmative action policy, as well as your policy related to the pro bono activities of your attorneys.

3. Contract. The Commonwealth's Standard Contract Form and Instructions must be executed in order for a Firm to be awarded a contract. The Standard Contract Form and Instructions must be completed and returned as part of the Firm's RFR response for Treasury. This document shall not become a final contract unless and until the Treasury accepts the Firm's response and the Standard Contract Form is executed by the Purchasing Office of the Treasury.

4. Terms and Conditions. The Commonwealth Terms and Conditions, as modified by Section 5.4 of the attached Legal Certification and Disclosure Statement, shall be incorporated by reference into any contract executed under this RFR for Treasury. A Firm is required to execute the Commonwealth Terms and Conditions and complete all blanks and required information fully and accurately. This is a separate document from the RFR but can be found at the above Comm-PASS website. If there are provisions of the Commonwealth Terms and Conditions, as clarified by Section 5.4 of the attached Legal Certification and Disclosure Statement, that you believe are inconsistent with your duties under the Massachusetts Rules of Professional Conduct or other duties, please describe the issue and any proposed solutions in a question to the Treasury by the Deadline for Submission of Questions date (see Procurement Calendar above).

5. Request for Taxpayer Identification Number and Certification (W-9). The W-9 Form should be completed ONLY if the Firm has not previously conducted business with the Commonwealth or the Treasury, and been registered on the Commonwealth's Contractor File OR if any information on a W-9 previously filed with the Commonwealth has been updated or changed.

6. Firm Authorized Signature Verification Form. If a Firm is a corporation, partnership or other business entity, complete the form as indicated.

7. Tax Compliance Certification. The Firm must demonstrate that it is in compliance with all Federal and Commonwealth tax laws, including M.G.L. Chapter 62C, Section 49A. The Firm must submit an original or photocopy of a Certificate of Tax Compliance in Good Standing, which has been issued by the Department of Revenue within the past year. This Certificate may be obtained by submitting a request to:

Taxpayer Services Division, Certificate Unit  
Department of Revenue

PO Box 7066  
Boston, Massachusetts 02204  
(617) 887-6550

The application must list the tax types for which the business is liable, including such items as meals, room occupancy, sales, use, withholding, corporate income and others as applicable. The issuance of the certificate normally takes several weeks, so Firms should also indicate that their request for a certificate is sought in connection with a Commonwealth solicitation (with a deadline). If the Firm does not submit the requested tax certificate with the Response, the Firm must submit documentation verifying that the appropriate application has been filed and the Certificate must be issued and provided prior to final execution of the Standard Contract Form.

8. Invest in Massachusetts Data Form. The Treasury encourages investment in our local economy and is committed to advancing the creation and preservation of jobs in the Commonwealth. Consequently, Firm's Responses must include a completed Invest in Massachusetts Data Form attached as Appendix 2, which may earn a Firm up to 5 points in the Phase Two evaluation.

9. Treasury Supplier Diversity Program Plan Form. The Treasury is committed to developing and strengthening Minority and Women-Owned Business Enterprises (M/WBEs) and expanding equal opportunity in the primary and any secondary industries affected by this RFR. Consequently, Firms' Responses must include a Treasury Supplier Diversity Program Plan Form attached as Appendix 3, which may earn a Firm up to 5 points in the Phase Two evaluation.

## PART 2

### PRESENTATION OF QUALIFICATIONS

#### IV PHASE TWO REVIEW Scope of Services & Response Requirements (80% of Base Score)

To be considered complete, a Firm's response to this RFR must be paginated and be presented using the numbering and ordering sequence used in this Scope of Services & Response Requirements section. In addition to the requirements of Section III.B (Mandatory Attachments), the Response package must include:

1. A cover letter (a) signed by the Firm Signatory, (b) identifying the category of legal services for which the Firm wishes to be considered (see Section IV.A below), (c) containing a statement to the effect that it constitutes an offer to provide the services requested subject to acceptance of compensation levels determined in accordance with this RFR, and (d) containing a statement that the Response was prepared solely by the firm and, prior to the time at which it became due and that it was not discussed with any individual outside of the firm, other than as specifically contemplated by this RFR.
2. A table of contents for the Response package.
3. A response to the questions and information requested in Sections IV.B, C, D, E, and F below.
4. Answers to the questions under the specific category of legal services to which the Firm is responding (i.e., G, H, I, J, or K – Note: if a Firm intends to respond to more than one category, it must submit separate Responses for each category to which it is responding).
5. The documents, as applicable, listed in the Table of Contents to this RFR as Addenda and Exhibits.
6. A separately bound Cost Proposal.

Firm responses must not exceed 25 pages. Page layout shall have appropriate business font, with no less than 12 point font size, and margins with singular column format. The cover letter, table of contents, Cost Proposal, and required addenda will NOT count towards this page limit.

## SCOPE OF SERVICES<sup>2</sup>

### A. Services to be Procured

1. General. Set forth below are the descriptions of the legal services to be provided by Firms under this RFR. These descriptions are not intended to be comprehensive but are intended to provide general guidance as to the Scope of Services that Firms will be expected to provide. Firms are advised that the Scope of Services will be considered to include, in addition to the services described below, all of those services understood by knowledgeable counsel to be reasonably necessary to satisfy the duties of such counsel.

2. Bond Counsel. Four to six bond counsel firms are expected to be qualified under this RFR. Bond counsel will be selected for individual issuances based upon an evaluation by Treasury to determine the Firm best suited to represent the Commonwealth on the transaction. Bond counsel selected for Treasury bond sales will be expected to provide complete legal representation as to all matters of state and federal law, including tax and securities matters, with respect to an issuance of general or special obligation bonds and notes, other than commercial paper, whether for new money or refunding purposes, as applicable. Bond counsel will be expected to examine all procedural requirements and all constitutions, statutes, laws, rules, regulations, resolutions, and other requirements relevant to or in any way affecting the issuance, sale, execution, deliver, and disclosure relating to any anticipated debt. Bond counsel will be expected to provide structuring advice with respect to any such debt issuance, including tax matters and the use of derivatives and other instruments. Bond counsel will be expected to prepare all necessary documentation in order to effectuate such transactions, including notices of sale, the preparation of all closing documentation, and review and approve the allocation of proceeds to the purposes for which bonds are issued, which may include bonding in advance of expenditure. Bond counsel will not be required to prepare the official statement for any bond transaction, which will be prepared by disclosure counsel, however, bond counsel will be expected to assist disclosure counsel in the preparation of the official statement and to render its opinion with respect to disclosure information for which it is responsible, including matters relating to the bonds and tax related matters. The foregoing legal representation may include, without limitation, the following tasks:

- \* render legal opinions;
- \* provide sophisticated legal advice on federal tax matters;
- \* review legal structure of bonds;
- \* participate in the preparation and review of offering documents;
- \* assist with presentations to rating agencies, market participants, and others;
- \* participate in meetings, as needed;
- \* review or prepare contracts;
- \* prepare an official transcript of original signed closing documents in a timely manner;
- \* assist in the preparation of tax forms;
- \* assist Disclosure Counsel with the preparation of disclosure and continuing disclosure documents and

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<sup>2</sup> NOTE: Individuals providing Legal Services to the Treasury may be considered to be “special state employees” subject to the provisions of the Massachusetts Conflict of Interest Law (M.G.L. c.268A).

- processes, as needed;
- \* analyze state or federal legislation, as needed;
- \* advise the Treasury on debt management, investment, and other policies, as needed;
- \* review and analyze the allocation of bond proceeds associated with each bond transaction;
- \* assist with the conduct of competitive or negotiated bond/note sale, including verification of bids; and
- \* prepare all necessary closing materials and conduct the close of the bond issuance; and
- \* assist in other legal matters and provide continuing legal advice, as needed.

3. Commercial Paper/Liquidity Counsel. Two Firms are expected to be selected for commercial paper/liquidity counsel. One Firm will be primary and the other Firm will be a back-up counsel. Commercial paper/liquidity counsel will be expected to provide complete legal representation as to all matters of state and federal law, including tax matters, with respect to the structure, maintenance and issuance of notes under the Commonwealth's tax-exempt commercial paper program and credit agreements and other agreements relating to variable rate debt. Commercial paper/liquidity counsel will be expected to render its opinion with respect to matters for which it is responsible, including matters relating to the notes and tax related matters. Firms that cannot so opine will not qualify as commercial paper/liquidity counsel. Commercial paper/liquidity counsel will be required to prepare all necessary documentation, including line and letter of credit documentation for participating banks, upon the renewal, replacement or expansion of credit support for the Commonwealth's commercial paper program and other variable rate debt needs. The foregoing legal representation may include, without limitation, the following tasks:

- \* render legal opinions associated with the issuance of commercial paper;
- \* prepare and review new or amended credit agreements, remarketing agreements, and paying agent agreements associated with the Commonwealth's commercial paper program or other variable rate debt;
- \* assist Disclosure Counsel with the preparation of disclosure, as needed; and
- \* monitor relevant tax issues.

4. Disclosure Counsel. Two Firms are expected to be selected for disclosure counsel for both the general obligation bond program and the special obligation bond program associated with the Accelerated Bridge Program ("ABP"). One Firm will be primary and the other Firm will be a back-up counsel. Disclosure counsel will be expected to prepare, on an ongoing basis, disclosure information required in connection with the issuance of debt by the Commonwealth, or by an agency or authority of the Commonwealth in a transaction in which its debt is guaranteed or supported by other assurance of payment made by the Commonwealth. Disclosure counsel will conduct and lead all necessary due diligence activities with respect to the utilization of Commonwealth disclosure materials. Disclosure counsel will issue its opinion in connection with the use of Commonwealth disclosure materials for each related debt issuance in substantially the form customary in Commonwealth debt issuances. Disclosure counsel will provide all services necessary to meet or exceed the Commonwealth's disclosure obligations contemplated by federal and state law, including the rules and regulations in effect from time to time of the SEC and the MSRB, and to provide information to credit rating agencies rating the debt of the Commonwealth. The Commonwealth believes that comprehensive and detailed disclosure is an essential part of its role as an issuer of municipal debt and seeks to achieve and maintain a

leadership role nationally for strong disclosure practices. Disclosure counsel will be expected to provide a critical service in achieving this goal and, as a result, be well informed regarding national best practices and trends relating to municipal disclosure. The current practice of the Commonwealth for its general obligation bond program is to prepare its Information Statement at least once a year, after the provision by the Comptroller of financial results for the prior fiscal year. Between those times, the Information Statement is updated as needed through supplements. For the ABP, disclosure needs will include annual filings and the preparation of official statements on an as-needed basis. The foregoing legal representation shall include, without limitation, the following tasks:

- \* prepare all annual disclosure requirements;
- \* develop and prepare the annual information statement;
- \* prepare all information statement supplements;
- \* lead the training of Commonwealth staff on disclosure responsibilities;
- \* keep the Commonwealth abreast of all MSRB and SEC disclosure announcements, rule changes, and guidances;
- \* render legal opinion for all general obligation bond offerings;
- \* provide the Commonwealth with notification of all continuing disclosure filing requirements;
- \* work with Treasury staff on the development and review of all mandatory or voluntary continuing disclosure filings and post to EMMA; and
- \* review of investor presentations, investor website, and assist with other investor related tasks.

5. Swaps/Derivatives Counsel. Two Firms are expected to be selected for swaps/derivative counsel. One Firm will be primary and the other Firm will be a back-up counsel. The Treasury is seeking law firms to assist it with various derivatives transactions and with issues that may arise in connection with modifying or terminating existing derivative agreements. The legal representation may include, without limitation, the following tasks:

- \* advise and assist the Treasury in the implementation of any negotiated or competitive process for the procurement of swaps or other derivative instruments;
- \* render legal opinions associated with new or amended interest rate swap or other derivatives agreements;
- \* assist in the development and negotiation of new or amended ISDA contracts;
- \* assist with restructurings of existing derivative agreements, including novations, modifications, and terminations;
- \* analyze and advise on federal or state legislation affecting derivative agreements;
- \* assist with issues associated with terminated derivative agreements; and
- \* advise Treasury on debt management and other policies.

6. Underwriters Counsel. The Treasury is seeking to develop a list of Firms that are qualified to serve as counsel to the underwriters of Commonwealth debt issuances in negotiated bond sales and that are approved under this RFR (the Treasury may add additional Firms to the list who subsequently submit Responses at the request of the Treasury or a qualified underwriter). From this list, underwriters within the pool of qualified underwriters for Treasury debt will select their counsel for negotiated transactions. Said underwriters' counsel

will be paid by Treasury but will not have an attorney-client relationship with, nor be subject to the direction or control of the Treasury. All firms seeking to represent underwriters utilized by the Treasury should submit a response to this element of the RFR. The foregoing legal representation shall include the tasks customarily performed by underwriters' counsel as determined by the selected underwriters, including, without limitation, assisting the underwriters in their due diligence, the preparation of the bond purchase agreement, and the structuring and selling of the bonds efficiently and with the utmost integrity.

## **RESPONSE REQUIREMENTS**

### **B. General Firm Information (20 Points)**

All Firms, regardless of the category or categories to which they are responding, must provide the following information:

1. General Information. Please provide a general description of the Firm, its history, significant changes in its makeup over the last three years, and its range of business and a Firm resume, if available. Other than a Firm resume, this description should be factual and focused on the legal services to which the Firm is responding and should not be written as marketing material.
2. Firm Signatory. Provide the name, address, phone number, and email address for the Firm Signatory (see Section III.A.1). Include a summary of his or her relevant experience. Identify the unique capabilities or experience that this person would bring to the engagement.
3. Qualifications and Experience. Provide a statement of qualifications for the Firm generally that clearly indicates the categories of legal services identified in this RFR for which it seeks to be selected and the Firm's qualifications to perform those services, including the Firm's current and historical expertise and experience in such categories of legal services.
4. Experience with Specific Services. Please state your Firm's experience in providing the particular legal services, for which it will be responding, over the past three (3) years.
5. Resumes. Please attach to Appendix 4 (Firm Resumes and Other Attachments) of your Response the resumes of each individual who will be providing legal services under this RFR. The Treasury reserves the right to reject a Firm's use of any particular individual to perform legal services, within the Treasury's sole discretion.

### **C Invest in Massachusetts (5 points)**

Please complete the IMD Form and attach it to your response as Appendix 2. The Instructions to the IMD Form are attached as Appendix 2 to this RFR (replace the Instructions with the completed form in your response) and the IMD Form is attached as Exhibit B to this RFR.



**D. Supplier Diversity Program (5 points)**

Please complete the TSDP Plan Form and attach it to your response as Appendix 3. The Instructions to the TSDP Plan Form are attached as Appendix 3 to this RFR (replace the Instructions with the completed form in your response) and the TSDP Plan Form are attached as Exhibit C to this RFR.

**E. References (15 Points)**

All responses must include references from at least three (3) clients of the Firm that required legal representation similar to that required by the Treasurer. The references must include a Firm contact person, a full address, and a phone number. In addition to the foregoing, please include a listing of public and private clients for whom the Firm has provided services similar to those set forth in this RFR, with a description of the services provided. If any of the individuals identified by a Firm in question 1 (Staffing) of the applicable Response Requirements of Section IV, subsections F, G, H, I, or J below previously participated in any of the projects performed for other clients on the aforementioned listing, please identify the projects in which each individual participated. Three references must be submitted for each component that the Firm is responding to. If a Response is submitted for multiple components, references can be combined where multiple services are provided.

**Qualifications And Experience  
For Specific Categories Of Legal Services.  
(55 Points for the category selected)**

This RFR seeks Responses for bond counsel, commercial paper/liquidity counsel, disclosure counsel, swaps/derivatives counsel, and underwriters' counsel. Firms may submit Responses in any one or more of the foregoing categories of services. The Response for each category, including the separately bound Cost Proposal, must be submitted as separate packages. Firms must respond to the following questions and requests for each category of services for which they will be submitting a Response.

## **F. Bond Counsel**

### **1. Staffing.**

- a. Describe your Firm's proposed Bond Counsel attorney staffing for any contract that results from this RFR. In addition to the resumes to be provided in Appendix 4 (Firm Resumes and Other Attachments), provide, in response to this question, a brief statement of each attorney's relevant legal qualifications and experience, professional affiliations, and Firm responsibilities and the particular responsibilities that he or she will handle on any engagement arising out of this RFR.
- b. Indicate, as to each attorney, whether he or she is assigned solely to the municipal finance practice area of your Firm, and if not, what percentage of his or her time is devoted to municipal finance.
- c. Indicate, in separate categories, the number of minority attorneys and women attorneys who are partners and who are associates (or other similar classifications) included in the above attorney staffing.
- d. Identify the tax attorneys who will handle Commonwealth matters and describe the experience of those attorneys and the experience of the Firm providing representation to governmental issuers on compliance with the Internal Revenue Code and the tax regulations, including arbitrage, private activity rules, transferred proceeds, allocation of bond proceeds, qualified hedges, post-issuance compliance, and other significant tax issues that your Firm has encountered in relation to the issuance of tax exempt or taxable debt, including Build America Bonds.

### **2. Experience/ Knowledge.**

- a. Describe your firm's experience since January 1, 2008 in serving as bond counsel for non-conduit tax-exempt governmental bonds in excess of \$450 million issued by any state, state agency, city, or county, noting in particular those that were Commonwealth issuers. Please provide the issuer's name (including a Firm contact person and telephone number), the par amount of bonds sold, the security for the bonds, the ratings on the bonds, whether the bonds were sold competitively or through a negotiated sale, the date of issue, and specify whether your firm issued the sole bond counsel opinion.
- b. Please describe up to five other engagements since January 1, 2008, most relevant to this RFR in which one or more of the attorneys named in response to Section IV, F, question 1 above had principal responsibility. In this regard, please provide the client's name, client contact and telephone number.

- c. Please describe your firm's understanding of Massachusetts constitutional and statutory law limitations on the issuance of general obligation bonds and notes by the Commonwealth. Please also review the summaries of the trust indentures for the Commonwealth's outstanding Commonwealth Transportation Fund bonds and Federal Grant Anticipation Notes (Accelerated Bridge Program) which are available on EMMA. Are there any limitations, structural or otherwise, on the issuance of general obligation, special revenue or lease obligation debt by the Commonwealth?
- d. Discuss your Firm's and your Firm Signatory's understanding of the Commonwealth's practice of allocating bond proceeds of a specific bond issue to capital expenditures previously paid or to be paid from the general fund. Discuss the role of bond counsel in that process and its relationship to other Commonwealth entities.
- e. Please describe your firm's experience with advance refundings. Please also describe the primary counsel's experience in serving as bond counsel on an advance refunding transaction.
- f. Please describe your firm's experience with tenders or open market purchases for tax-exempt bonds.
- g. Please describe your firm's experience with interest rate swaps or hedges. Please describe your firm's experience with refundings of variable rate bonds who have been swapped to fixed via an interest rate swap.
- h. Please describe your firm's experience with the issuance of variable rate debt, including the various forms of bank liquidity or direct purchases. Please also describe the primary counsel's experience in serving as bond counsel on a variable rate transaction.
- i. Please describe your firm's experience with the issuance of cash flow notes – either as fixed-rate Revenue Anticipation Notes (RANs) or commercial paper RANs. Please describe the primary counsel's experience in serving as bond counsel on cash flow note borrowing.

3. Problems/ Solutions/ Suggestions.

- a. List three practical solutions to tax issues or problems which your firm has contributed to a tax-exempt transaction since January 1, 2008. These practical solutions need not have been contributed when your firm was acting as bond counsel.
- b. Please list up to three practical solutions to problems or issues that were encountered on tax-exempt transactions to which your firm, serving as bond counsel, has contributed since January 1, 2008. Please also list up to three practical solutions to tax issues or problems to which your firm has contributed since January 1. 2008.

- c. The Treasury has used and will continue to consider using derivative products in connection with the issuance of Commonwealth debt. Discuss the particular derivative products that your firm has had experience with, and list the specific transactions closed since January 1, 2008 in which your firm played a direct role and where derivatives were either utilized or considered. Provide detail as to the type of derivative product or products that were utilized, the specific role that your firm played, as well as the person who served as the lead attorney at your firm on the transaction. Include a discussion of changes in the derivative market over that period of time and how those changes have affected the responsibilities of bond counsel.
- d. The Commonwealth may consider a continuous offering of bonds to the market over an extended period of time rather than the more typical one-day or two-day bond sale. If bonds were to be offered over a period of two weeks, one month, or multiple months, please discuss the practical and legal challenges that such a program would entail. Please provide your recommendations as to addressing those challenges as bond counsel.
- e. Should the Commonwealth base its post-issuance tax exempt compliance responsibilities on reasonable expectations as of the issue date of the bonds being issued? How would you recommend that the Commonwealth establish reasonable expectations? As bond counsel, how would your firm document that appropriate due diligence was done at the time of issuance? If any, please provide examples of issuers who base their post-issuance compliance responsibilities on reasonable expectations.
- f. Aside from establishing/adopting procedures, what else could we be doing to ensure that the Commonwealth has an appropriate post-issuance monitoring system? Do you recommend an annual survey? If so, please describe the types of questions you recommend the Treasury ask as part of that survey.
- g. If you were selected as bond counsel, what would you recommend the Commonwealth do in terms of training of the Commonwealth staff who are responsible for the spending of bond proceeds in terms of post-issuance compliance?
- h. For bond sales, what documents do you recommend the Commonwealth maintain as part of the official deal file for documents that would not otherwise be included in an official transcript?
- i. Please review the Commonwealth's capital spending report (attached as Exhibit D) and object codes (available on the website of the Office of the State Comptroller). If applicable, please provide recommendations to improve the data presented in the capital spending reports. Do you recommend adding additional fields to the capital spending report? Should capital spending be listed by appropriation?

- j. Please review the Commonwealth's most recent official statement from its May 2011 general obligation bond sale (The Commonwealth of Massachusetts \$469,635,000 General Obligation Bonds Consolidated Loan of 2011 Series B & C) available on EMMA. If applicable, please make specific recommendations as bond counsel as to how the official statement could be improved from an investor disclosure standpoint. Would you recommend that the Commonwealth include a one-page summary or "tear-sheet" at the beginning of the official statement? As bond counsel, do you recommend other summaries be included in the official statement so that the offering document is easier to read for investors?
- k. Please review the Commonwealth's most recent Continuing Disclosure Agreements (CDAs) for its General Obligation Bonds, Commonwealth Transportation Fund Bonds, and Federal Highway Grant Anticipation Notes (Accelerated Bridge Program) that are available on EMMA. If applicable, as bond counsel please make specific recommendations as to how the CDAs could be improved from an investor disclosure standpoint.
- l. If in normal pre-sale investor outreach activities the Commonwealth develops a presentation to the rating agencies and/or a presentation to investors, as bond counsel do you recommend the Commonwealth post that presentation to EMMA or to its investor relations website?
- m. Do you recommend the Commonwealth post and disseminate Preliminary Official Statements via EMMA? Please provide specific recommendations as to how this can be accomplished.
- n. Should the Build America Bond program, or a new tax credit bond program similar to the Build America Bond program, be re-authorized by Congress allowing municipal issuers such as the Commonwealth to offer taxable bonds to investors, would you recommend any specific protocol regarding the tax certificate and issue price?
- o. Should the Commonwealth consider reverse inquiries for orders for bonds from institutional investors? From a state finance law perspective, what are the challenges to considering reverse inquiries and private placements.
- p. Discuss any recommendations you would have for the Commonwealth in terms of a formal debt management policy.
- q. Based on your understanding of the Commonwealth's debt portfolio and its financing needs going forward, please detail any recommendations you may have in terms of overall risk reduction measures the Commonwealth should consider in managing its outstanding debt or financing new debt.

4. Miscellaneous.

- a. Discuss how your Firm has worked with in-house legal counsel and other staff of an issuer in connection legal issues arising from the issuance of debt and how you would suggest that your Firm work with Treasury's in-house counsel and other staff in connection with the issuance of Commonwealth debt.
- b. Assuming that Treasury planned to price a \$450 millions new money issue general obligation bond issue on January 1, 2012 and your Firm were selected as bond counsel under this RFR, how would you commence your engagement, including your time-lines and what issues would you anticipate arising.
- c. Include among, or in addition to, the references your Firm lists in Section IV.E. (References) above, three issuers similar to the Commonwealth where the firm has worked as bond counsel. Please describe if the bond counsel was for work on a general obligation bond program or a special obligation bond program. Please provide the name of the issuer and the contact person for the issuer (including a phone number and e-mail address). Please also provide a brief description of the issue, including the series of bonds for which the firm served as bond counsel, the size of the bond offering, and the issue date .
- d. Include among, or in addition to, the references your Firm lists in Section IV.E. (References) above, three issuers similar to the Commonwealth where the primary counsel has worked as bond counsel. Please describe if the bond counsel was for work on a general obligation bond program or a special obligation bond program. Please provide the name of the issuer and the contact person for the issuer (including a phone number and e-mail address). Please also provide a brief description of the issue, including the series of bonds for which the firm served as bond counsel, the size of the bond offering, and the issue date.
- e. How should bond counsel be evaluated after a financing?

## **G. Commercial Paper/Liquidity Counsel**

### **1. Staffing.**

- a. Describe your Firm's proposed Commercial Paper/Liquidity Counsel attorney staffing for any contract that results from this RFR. In addition to the resumes to be provided in Appendix 4 (Firm Resumes and Other Attachments), provide, in response to this question, a brief statement of each attorney's relevant legal qualifications and experience, professional affiliations, and Firm responsibilities and the particular responsibilities that he or she will handle on any engagement arising out of this RFR.
- b. Indicate, as to each attorney, whether he or she is assigned solely to the municipal finance practice area of your Firm, and if not, what percentage of his or her time is devoted to municipal finance.
- c. Indicate, in separate categories, the number of minority attorneys and women attorneys who are partners and who are associates (or other similar classifications) included in the above attorney staffing.
- d. Identify the tax attorneys who will handle Commonwealth commercial paper related matters and describe the experience of those attorneys and the experience of the Firm providing representation to governmental issuers on compliance with the Internal Revenue Code and the tax regulations.

### **2. Experience/ Knowledge.**

- a. Discuss the relevant experience since January 1, 2008 of the professionals named in response to question 1 above in preparing bank line and letter of credit documentation utilized in non-conduit, governmental issuances of tax-exempt debt.
- b. Discuss the firm's experience in negotiating terms of a standby bond purchase agreement, direct pay letter of credit agreement, and direct purchase/funded loan agreements over the last two years. Please describe if the negotiation was for an evergreen agreement, an extension agreement, or substitution/amendment to an existing agreement. Please discuss separately the firm's experience negotiating these agreements on behalf of issuers in Massachusetts versus its experience nationally.
- c. Discuss the experience of the primary counsel to be assigned to the Commonwealth in negotiating terms of a standby bond purchase agreement, direct pay letter of credit, and direct purchase/funded loan agreements over the last two years. Please describe if the negotiation was for an ever-green agreement, an extension agreement, or substitution/amendment to an existing agreement. Please discuss separately the counsel's experience negotiating these agreements on behalf of issuers in Massachusetts versus his/her experience nationally.

- d. Please discuss both the firm's experience as well as the primary counsel's experience over the last three years dealing with failed remarketings and bank bonds.
- e. Discuss the firm's experience dealing with extendible commercial paper programs. Please describe how such a program could be created for the Commonwealth.
- f. Describe any legal work you have performed for the Commonwealth in the past two years.
- g. Describe any legal work you have performed for issuers within Massachusetts other than the Commonwealth.
- h. Indicate your understanding of Massachusetts constitutional and statutory law limitations on the issuance of commercial paper as RANs and BANs by the Commonwealth.

3. Problems/ Solutions/ Suggestions.

- a. The Commonwealth has authority to issue both RANs and BANs under its existing commercial paper program. The Commonwealth's cash flow projections are maintained on a consolidated basis covering both operating and capital flows, with capital expenditures being recorded separately with respect to specific legislative authorizations. How do you see Commercial Paper/Liquidity Counsel's role in ensuring that Commonwealth RAN issuances are tax-exempt?
- b. Please review the Commonwealth's most recent standby bond purchase agreement entered into with Wells Fargo Bank, NA (available on EMMA) and provide specific suggestions as to improvements to the terms and conditions that would provide stronger credit protections for the Commonwealth. Are there certain risks that would be mitigated by negotiating different terms?
- c. Discuss any general trend you have observed over the last two years in terms of changes in terms sought by bank liquidity providers within standby bond purchase agreements and other credit agreements and how they may advantage or disadvantage the Commonwealth. Given changes in the market for bank liquidity, specifically which terms of a standby bond purchase agreement or other credit agreement should be the focus of negotiations?
- d. Discuss the advantages and disadvantages of the Commonwealth providing self-liquidity for variable rate demand bonds and/or commercial paper. If the Commonwealth were to consider self-liquidity as an option in the future, what changes to Chapter 29 or other chapters of the Massachusetts General Laws would be required?
- e. Discuss the advantages and disadvantages of the general terms and conditions of direct purchase/funded loan agreements that the firm has experience with versus the terms and conditions of a standby bond purchase agreement.



- f In less than one page, describe the role that you feel commercial paper and variable rate debt should play with the Commonwealth's financing structure.

4. Miscellaneous.

- a. Does your firm also provide legal advice to any banks and/or bank liquidity providers in the municipal market? Describe any potential areas of conflict, if any.
- b. Include among, or in addition to, the references your Firm lists in Section IV.E (References) above, three references of large issuers similar to the Commonwealth by credit and debt portfolio where your Firm Signatory has specifically worked as counsel on commercial paper credit agreements, standby bond purchase agreements, direct pay letter of credit agreements, direct purchase/funded loans.

## H. Disclosure Counsel

### 1. Staffing.

- a. Describe your Firm's proposed Disclosure Counsel attorney staffing for any contract that results from this RFR. In addition to the resumes to be provided in Appendix 4 (Firm Resumes and Other Attachments), provide, in response to this question, a brief statement of each attorney's relevant legal qualifications and experience, professional affiliations, and Firm responsibilities and the particular responsibilities that he or she will handle on any engagement arising out of this RFR.
- b. Indicate, as to each attorney, whether he or she is assigned solely to the municipal finance practice area of your Firm, and if not, what percentage of his or her time is devoted to municipal finance.
- c. Indicate, in separate categories, the number of minority attorneys and women attorneys who are partners and who are associates (or other similar classifications) included in the above attorney staffing.

### 2. Experience/ Knowledge.

- a. Describe up to five other engagements since January 1, 2008, most relevant to this RFR in which one or more of the professionals named in response to the question in Section IV.H.1.a. above had principal responsibility as disclosure counsel. In this regard, please provide the client's name, client contact and telephone number.
- b. Please include a copy of one disclosure document prepared by your firm for an issuer, comparable in disclosure complexity to the Commonwealth's disclosure, that you believe to be indicative of the work to be performed by your Firm for the Commonwealth as disclosure counsel. Please attach such example to Appendix 4 (Firm Resumes and Other Attachments). Please list the particular lawyer or lawyers from your firm who performed the work on the submitted document and whether the lawyer is included in the proposed staffing for the Commonwealth. If not, please separately attach a disclosure document prepared by the lawyer whom your firm will assign as primary counsel for the Commonwealth's Disclosure Counsel.
- c. Discuss your firm's experience with and understanding of Massachusetts state government. What are the three most unique disclosure issues which necessarily arise under Massachusetts law?
- d. Disclosure by issuers of municipal securities is a growing area of scrutiny by the SEC, the Municipal Securities Rulemaking Board. Please describe your understanding of the changing or increasing expectations regarding the scope and quality of disclosure. In particular, please comment on your views, advice, suggestions or practices to ensure that issuers, such as the Commonwealth, meet or exceed all anticipated federal and state disclosure obligations.

- e. Please describe the experience of your firm in the preparation of disclosure documents for a state, large city, or large authority (which are all comparable in disclosure complexity to the Commonwealth), including disclosure of fiscal, budgetary and economic information concerning such issuer. List the number and types of issues in which your firm has acted as disclosure counsel since January 1, 2008.

3. Problems/ Solutions/ Suggestions.

- a. List three practical solutions to disclosure issues or problems which your firm has contributed to a transaction since January 1, 2008 when serving as disclosure counsel.
- b. Please review the Commonwealth's annual information statement (available on EMMA), dated March 15, 2011. If applicable, please make specific recommendations as to how the disclosure document could be improved from an investor disclosure standpoint. Are there specific subject areas that should be discussed in greater detail in the information statement? Is the document written in "plain English"? If making recommendations based on the disclosure documents of another issuer or on the recommended best practices of the Government Finance Officers of America or the National Federation of Municipal Analysts, please reference to those sources.
- c. How often, in your view, should the Commonwealth update the basic fiscal, budgetary and economic information contained in the Commonwealth Information Statement? What is your Firm's view of the Commonwealth's current practice of using an annual information statement with supplements, as necessary?
- d. After reviewing the Commonwealth's annual information statement, please review the Commonwealth's most recent information statement supplements (available on EMMA). Are there specific tables of data included in the annual information statement that should always be included in information statement supplements? Should certain tables be included and updated annually or semi-annually or quarterly or monthly? Please be as specific as possible.
- e. Should the Commonwealth include an economic summary in the narrative of its information statement (annual or supplements)? Please make recommendations as to how this could be incorporated. Please provide examples of other state's disclosure documents that include an economic summary narrative, if any.

- f. Please review the Commonwealth's most recent official statement from its May 2011 general obligation bond sale available on EMMA (The Commonwealth of Massachusetts \$469,635,000 General Obligation Bonds Consolidated Loan of 2011 Series B & C). If applicable, please make specific recommendations as to how this disclosure document could be improved from an investor disclosure standpoint. Would you recommend that the Commonwealth include a one-page summary or "tear-sheet" at the beginning of the official statement? Do you recommend other summaries be included in the official statement so that the offering document is easier to read for investors?
- g. Please review the Treasury's Debt Management website ([www.mass.gov/treasury/debt](http://www.mass.gov/treasury/debt)). This website is intended to supplement the official disclosures made to the municipal market through EMMA. If applicable, please make specific recommendations as to how the website could be improved from an investor disclosure standpoint.
- h. Please review the Commonwealth's most recent Continuing Disclosure Agreements (CDAs) for its General Obligation bonds, Commonwealth Transportation Fund Bonds, and Federal Highway Grant Anticipation Notes (Accelerated Bridge Program) that are available on EMMA. If applicable, please make specific recommendations as to how the CDAs could be improved from an investor disclosure standpoint.
- i. Please discuss the advantages and disadvantages of moving to a formal, published, set schedule of disclosure updates over the course of a fiscal year.
- j. Should the Commonwealth provide a URL link to its investor relations website on EMMA for the benefit of investors seeking additional or supplemental information, what protocols would you recommend be put in place to ensure that the material on the website is timely and that dated material is appropriately archived?
- k. The Commonwealth may consider a continuous offering of bonds to the market over an extended period of time rather than the more typical one-day or two-day bond sale. If bonds were to be offered over a period of two weeks, one month, or multiple months, please discuss the practical and legal disclosure challenges that such a program would entail. Please provide your recommendations as to addressing those challenges.
- l. Please describe how the Commonwealth would meet its disclosure obligations when engaging in investor relations activities, including investor conferences, investor conference call presentations, investor e-mails, and investor one-on-one meetings. If in normal pre-sale investor outreach activities the Commonwealth develops a presentation to the rating agencies and/or a presentation to investors, do you recommend the Commonwealth post that presentation on EMMA or to its investor relations website?

- m. Please describe how the Commonwealth would meet its disclosure obligations when using social media (Facebook, Twitter, RSS feeds, etc.) to discuss its financing activities or credit issues.
- n. Do you recommend the Commonwealth post and disseminate Preliminary Official Statements via EMMA? Please provide specific recommendations as to how this can be accomplished.
- o. Discuss any recommendations you would have for the Commonwealth in terms of a formal disclosure policy.
- p. Discuss how you would determine which departments/offices/agencies, and which individuals in those departments/offices/agencies, would be responsible for providing 10b-5 letters as part of the Commonwealth's disclosure process?
- q. If the Build America Bonds (BABs) program, or a new tax credit bond program similar to the BABs program, is re-authorized by Congress allowing municipal issuers such as the Commonwealth to offer taxable bonds to investors, what protocols do you recommend to ensure that bonds could be offered to international investors appropriately without placing undue international securities registration or other disclosure burdens on the Commonwealth?
- r. It is the stated goal of the Commonwealth to be the practice leader in terms of premier investor disclosure. In less than one page, please describe the role that you feel investor disclosure should play as part of the Commonwealth's borrowing programs. Please consider the Commonwealth's disclosure documents, investor outreach, the investor website, adopted policies and procedures, etc. in making your recommendations.
- s. Given the recent SEC scrutiny of investor disclosure in the issuance of municipal securities (e.g., investigations involving San Diego, CA and the State of New Jersey pension disclosure), what specific areas of documentation should be the focus of governmental entities such as the Commonwealth as a result of "lessons learned"?
- t. Please discuss how you would define 'material' or handle the question of 'what should a person consider material'?

4. Miscellaneous.

- a. If your Firm were selected as disclosure counsel under this RFR, how would you commence your engagement, including your time-lines and what issues would you anticipate arising.
- b. If you were selected as disclosure counsel, what recommendations would you make in terms of training of the staff Commonwealth-wide who are responsible for handling disclosure? How would you handle on-going education of that group regarding disclosure requirements with ongoing disclosure-related releases from the MSRB or SEC?

- c. If your firm was chosen as the Commonwealth's new disclosure counsel for its general obligation bond program, please recommend how the Commonwealth would seamlessly transition those responsibilities from its current disclosure counsel to your firm. Please be as specific as possible about steps taken and schedule to ensure your firm has a full understanding of the Commonwealth's disclosure needs and disclosure mechanics.
- d. Include among, or in addition to, the references your Firm lists in Section IV.E (References) above, three issuers similar to the Commonwealth where the Firm Signatory has worked as disclosure counsel while an attorney with your Firm. Please describe if the disclosure counsel was for work on a general obligation bond program or a special obligation bond program.

## **I. Swaps/Derivatives Counsel**

### **1. Staffing.**

- a. Describe your Firm's proposed Swaps/Derivatives Counsel attorney staffing for any contract that results from this RFR. In addition to the resumes to be provided in Appendix 4 (Firm Resumes and Other Attachments), provide, in response to this question, a brief statement of each attorney's relevant legal qualifications and experience, professional affiliations, and Firm responsibilities and the particular responsibilities that he or she will handle on any engagement arising out of this RFR.
- b. Indicate, as to each attorney, whether he or she is assigned solely to the municipal finance practice area of your Firm, and if not, what percentage of his or her time is devoted to municipal finance.
- c. Indicate, in separate categories, the number of minority attorneys and women attorneys who are partners and who are associates (or other similar classifications) included in the above attorney staffing.
- d. Identify the tax attorneys who will handle Commonwealth swaps/derivatives matters and describe the experience of those attorneys and the experience of the Firm providing representation to governmental issuers on compliance with the Internal Revenue Code and the tax regulations.

### **2. Experience/ Knowledge.**

- a. Describe your Firm's experience working with state level issuers comparable to the Commonwealth on derivative agreements/transactions. Describe the Firm Signatory's experiences with state level issuers on derivative agreements/transactions.
- b. Describe the transaction volume and dollar notional value of tax-exempt swap transactions for which your Firm has provided legal assistance during the last five years; please include a description of the scope of services provided to other public issuers.
- c. Will your firm provide a "qualified hedge" opinion? If so, provide a form of such opinion in Appendix 4 (Firm Resumes and Other Attachments).
- d. Discuss how you would address choice of law, venue, and indemnification provisions in ISDA derivative contracts or other derivative instruments in your representation of the Commonwealth.
- e. Discuss your Firm's experience with, and understanding of Mass. General Laws with respect to derivatives. Please describe any restrictions under the law and how the Commonwealth can best address such restrictions when considering a derivatives agreement.

- f. Describe your experience with various reinvestment products (i.e. debt service deposit agreements, forward purchase agreements, construction fund GICs, etc.).
- g. Describe any work you have performed for the Commonwealth.
- h. Describe any work you have performed for issuers within Massachusetts other than the Commonwealth.

3. Problems/ Solutions/ Suggestions.

- a. Discuss the advantages and disadvantages associated with negotiating asymmetric terms within the ISDA contract between the Commonwealth and its counterparties. Should the Commonwealth be pursuing asymmetric terms, and if so, specifically which terms should be the focus of the negotiations? (Assume that the Commonwealth will not post collateral).
- b. Discuss your experience dealing with Termination Events and Events of Default over the past three years. Highlight your experience dealing with the Lehman bankruptcy, if any.
- c. Discuss your experience working on novations over the past three years.
- d. Given the market's experience dealing with various Events of Default and Termination Events over the past three years, what specific documentation areas should be the focus for governmental entities as a result of "lessons learned"?
- e. In less than one page, describe the role that you feel derivatives should play with the Commonwealth's financing structure.

4. Miscellaneous.

- a. Does your firm also provide legal advice to any dealers/providers in the municipal market? Describe any potential areas of conflict, if any.



## **J. Underwriters' Counsel**

### **1. Staffing.**

- a. Describe your Firm's proposed Underwriters' Counsel attorney staffing for any contract that results from this RFR. In addition to the resumes to be provided in Appendix 4 (Firm Resumes and Other Attachments), provide, in response to this question, a brief statement of each attorney's relevant legal qualifications and experience, professional affiliations, and Firm responsibilities and the particular responsibilities that he or she will handle on any engagement arising out of this RFR.
- b. Indicate, as to each attorney, whether he or she is assigned solely to the municipal finance practice area of your Firm, and if not, what percentage of his or her time is devoted to municipal finance.
- c. Indicate, in separate categories, the number of minority attorneys and women attorneys who are partners and who are associates (or other similar classifications) included in the above attorney staffing.

### **2. Experience/ Knowledge.**

- a. Please describe your firm's experience since January 1, 2008 in serving as underwriters' counsel for tax-exempt bonds in excess of \$450 million issued by any state, state agency, city or county, noting in particular those that were Commonwealth issuers. Please provide the issuer name, the name of the book-running senior manager, the par amount of bonds sold, the security for the bonds, the ratings on the bonds, and the date of issue.
- b. Please include a copy of a bond purchase agreement that your firm has developed for a tax-exempt transaction since January 1, 2010. Please include the document as in Appendix 4 (Firm Responses and Other Attachments)
- c. Please describe your firm's understanding of Massachusetts constitutional and statutory law limitations on the issuance of general obligation bonds and notes by the Commonwealth.
- d. Please describe your firm's experience with and understanding of Massachusetts state government. What are the three most unique disclosure issues which necessarily arise under Massachusetts law?
- e. Please describe any work you have performed for the Commonwealth.
- f. Please describe your firm's experience with the issuance of variable rate debt. Please also describe the primary counsel's experience in serving as underwriters' counsel on a variable rate transaction.
- g. Describe any work you have performed for issuers within Massachusetts other than the Commonwealth.

3. Problems/ Solutions/ Suggestions.

- a. Please list up to three practical solutions to problems or issues that were encountered on tax-exempt transactions to which your firm, serving as underwriters' counsel, has contributed since January 1, 2008.
- b. When performing due diligence as underwriters' counsel, do you recommend that the entire syndicate of banks or just the book-running senior manager participate?
- c. Given the recent SEC scrutiny of investor disclosure in the issuance of municipal securities (e.g., investigations involving San Diego, CA and the State of New Jersey pension disclosure), what specific areas of documentation should be the focus of governmental entities such as the Commonwealth as a result of "lessons learned"?
- d. Please review the Commonwealth's annual information statement, available on EMMA, dated March 15, 2011. If applicable, please make specific recommendations as underwriters' counsel as to how the disclosure document could be improved from an investor disclosure standpoint. Are there specific subject areas that should be discussed in greater detail in the information statement? Is the document written in "plain English"? If making recommendations based on the disclosure documents of another issuer or on the recommended best practices of the Government Finance Officers of America or the National Federation of Municipal Analysts, please reference to those sources.
- e. After reviewing the Commonwealth's annual information statement, please review the Commonwealth's most recent information statement supplements, available on EMMA. As underwriters' counsel, do you recommend that specific tables of data should always be included in the Commonwealth's information statement supplements? Should certain tables be included and updated annually or semi-annually or quarterly or monthly? Please be as specific as possible.
- f. Please review the Commonwealth's most recent official statement from its May 2011 general obligation bond sale (The Commonwealth of Massachusetts \$469,635,000 General Obligation Bonds Consolidated Loan of 2011 Series B & C) available on EMMA. If applicable, please make specific recommendations as underwriters' counsel as to how the official statement could be improved from an investor disclosure standpoint. Would you recommend that the Commonwealth include a one-page summary or "tear-sheet" at the beginning of the official statement? As underwriters' counsel, do you recommend other summaries be included in the official statement so that the offering document is easier to read for investors?

- g. Please review the Commonwealth's most recent Continuing Disclosure Agreements (CDAs) for its General Obligation bonds, Commonwealth Transportation Fund Bonds, and Federal Highway Grant Anticipation Notes (Accelerated Bridge Program), available on EMMA. If applicable, as underwriters' counsel please make specific recommendations as to how the CDAs could be improved from an investor disclosure standpoint.
- h. Please review the summaries of the trust indentures for the Commonwealth's outstanding Commonwealth Transportation Fund bonds and Federal Grant Anticipation Notes (Accelerated Bridge Program) which are available on EMMA. Are there any limitations, structural or otherwise, on the issuance of general obligation, special revenue or lease obligation debt by the Commonwealth?

Do you recommend the Commonwealth post and disseminate Preliminary Official Statements via EMMA? Please provide specific recommendations as to how this can be accomplished.

- i. The Commonwealth may consider a continuous offering of bonds to the market over an extended period of time rather than the more typical one-day or two-day bond sale. If bonds were to be offered over a period of two weeks, one month, or multiple months, please discuss the practical and legal challenges that such a program would entail as underwriters' counsel. Please provide your recommendations as to addressing those challenges as underwriters' counsel.

#### 4. Miscellaneous.

- a. Include among, or in addition to, the references your Firm lists in Section IV.E (References) above, three references of issuers similar to the Commonwealth in which the firm has served as underwriters' counsel since January 1, 2008. Please provide the name of the issuer and the contact person for the issuer (including a phone number and e-mail address). Also provide a brief description of the issue, including the name of the book-running senior manager, the series of bonds, the size of the bond offering, and the issue date.
- b. In addition to the references listed in Section IV.E (References) above, also list three references of book-running senior managers on transactions in which the firm served as underwriters' counsel for issuers similar to the Commonwealth since January 1, 2008. Please provide the contact person for the book-running senior manager (including a phone number and e-mail address). If different from the above question, please also provide a brief description of the issue, including the name of the issuer, the series of bonds, the size of the bond offering, and the issue date.
- c. How should underwriters' counsel be evaluated after a financing?

**V**  
**PHASE THREE REVIEW**  
**Separately Bound Cost Response**  
**(20% of Base Score)**

In a separately bound document, present a Cost Response to provide the outlined services under this RFR. The Cost Response will comprise 20% of the Firm's base evaluation score. The Treasury reserves the right to negotiate any and all costs and/or expenses with any Firm. The Cost Response must include:

**A. Costs – Flat Rates**

Please provide flat fee quotes for the following transactions

Bond Counsel:

- a. Competitive new money general obligation financing
- b. Negotiated new money general obligation financing
- c. Competitive new money special obligation financing
- d. Negotiated new money special obligation financing
- e. Stand-alone current refunding
- f. Stand-alone advance refunding
- g. Current refunding as part of a new money issue
- h. Advance refunding as part of a new money issue
- i. Competitive Revenue Anticipation Notes of Bond Anticipation Notes (non-CP)
- j. Negotiated Revenue Anticipation Notes of Bond Anticipation Notes (non-CP)
- k. Negotiation of new standby bond purchase agreement

Disclosure Counsel:

- a. Annual fee for general obligation bond program
- b. Annual fee for special obligation bond program (Accelerated Bridge Program)

Underwriters' Counsel:

- a. Negotiated general obligation transaction (new money or refunding)
- b. Negotiated special obligation transaction (new money or refunding)

Commercial Paper and Liquidity Counsel:

- a. Blended hourly rate
- b. Negotiation of new credit agreements/standby bond purchase agreement

Swaps/Derivatives Counsel:

- a. New derivatives associated with general obligation or special obligation bonds
- b. Fee for legal work associated with a derivative transaction if the Firm is already serving as bond counsel
- c. Restructuring (novation, termination, etc.) of existing derivative
- d. Negotiation of ISDA form of derivative with new counterparty

**B. Expenses.**

Out-of-pocket costs and expenses will not be paid by Treasury.

**C. Costs – Hourly Rates**

Please provide schedule of hourly rates for each individual identified as a provider of legal services to the Commonwealth under this RFR that are not covered by the flat-rates in Section A, as follows:

- a. Senior partner
- b. Junior partner
- c. Senior Associate
- d. Junior Associate
- e. Paralegal

No compensation will be permitted for the services of law clerks or newly graduated law students not admitted to the bar.

## APPENDIX 1

### LEGAL CERTIFICATION AND DISCLOSURE STATEMENT

*This Legal Certification and Disclosure Statement should be read broadly and any perceived ambiguity should either be resolved in favor of disclosing information, or be raised with the RFR Contact Person*

*Treasury reserve the right to reject a Firm's response or deduct points from a Firm's score, in its sole discretion, based on information provided in the Legal Certification and Disclosure Statement and to independently investigate and verify such information. Any misstatement of, or failure to disclose material information requested in the Legal Certification and Disclosure Statement shall be grounds for disqualification.*

### CERTIFICATIONS

1. **Tax Compliance.** Pursuant to M.G.L. Chapter 62C, the undersigned certifies under penalties of perjury that the firm (check applicable item):
  - 1.1. \_\_\_\_\_ has filed and paid all taxes required by law; or
  - 1.2. \_\_\_\_\_ has filed a pending application for abatement of such tax; or
  - 1.3. \_\_\_\_\_ has a petition before the appellate tax board contesting such tax; or
  - 1.4. \_\_\_\_\_ does not derive taxable income from Massachusetts sources such that it is subject to taxation by the Commonwealth.
2. **Certificate Regarding Companies Doing Business in Northern Ireland.** Pursuant to M.G.L. Chapter 7, the undersigned hereby certifies under penalties of perjury that the firm is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland, and the firm (check applicable item):
  - 2.1. \_\_\_\_\_ does not employ ten or more employees in an office or other facility located in Northern Ireland;  
or
  - 2.2. \_\_\_\_\_ employs ten or more employees in an office or other facility located in Northern Ireland, but such office or other facility located in Northern Ireland (a) does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and (b) promotes religious tolerance within the work place, and the eradication of any manifestations religious and other illegal discrimination.
3. **Conflict of Interest.** In accordance with Section II.A.6 (Conflict of Interest) of this RFR, the respondent must certify that no relationship exists between the respondent and the Commonwealth or any other Massachusetts state agency or authority, which would constitute a violation of any Massachusetts general or special law or is a conflict of interest. The respondent must also certify that no relationship exists which interferes with fair competition with respect to its response or performance of work pursuant to this RFR. If

the respondent cannot make these certifications, the respondent must disclose any conflict of interest or potential conflict of interest to the Commonwealth.

3.1. \_\_\_\_\_ The undersigned certifies that no Conflict of Interest exists.

3.2. \_\_\_\_\_ The undersigned cannot certify that no Conflict of Interest exists, and provides disclosure below.

#### **4. Legal Matters – Solvency/ Good Standing/ Qualifications.**

The Undersigned certifies that:

4.1. The Firm has not been in bankruptcy and/or receivership within the last three calendar years.

4.2. Each of the individual attorneys listed in the Firm's response is a member in good standing of the Massachusetts Bar and is qualified to perform the category of legal services for which the Firm wishes the attorney to be considered or is licensed and in good standing in another state, but qualified to perform the duties required under the RFR within the relevant jurisdiction or before the Internal Revenue Service or the Securities and Exchange Commission.

4.3. The undersigned will be the lead attorney on any engagement and that he or she is a member, in good standing of the Massachusetts Bar and listed among the attorneys in the "Municipal Bond Attorney's Section" of The Bond Buyer's Municipal Market Place (the "Red Book").

#### **5. Miscellaneous.**

The Undersigned certifies that:

5.1. The Firm agrees to meet every specification, requirement, or condition set forth in the RFR. (This statement will not be deemed to encompass any requirement, specification, or condition for which the RFR indicates that a preference may or will be given by the Treasury; any such requirement, specification, or condition must be met by only a Firm seeking the preference.)

5.2. The Firm acknowledges that all materials and information provided to the Firm by the Treasury or acquired by the Firm on behalf of the Treasury shall be regarded as confidential information in accordance with Federal and State law, and ethical standards. The Firm must take all necessary steps to safeguard the confidentiality of such materials or information.

5.3. The Firm's Response and its contents will become the sole property of the Commonwealth upon receipt. The Commonwealth will not accept or recognize any copyright or patent claim with respect to any Firm's methods, processes, or analyses or in any representations of such methods, processes, or analyses that are included in its Response.

5.4. The Firm acknowledges and accepts Section 11 (Indemnification) of the Commonwealth Terms and

Conditions, as clarified herein. Pursuant to Treasury Policy, the following clarifications shall apply: The term “other damages” shall include, but shall not be limited to, the reasonable costs the Commonwealth or the Treasury incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a contract. “Other damages” shall not include damages to the Commonwealth or the Treasury as a result of the acts of third parties, provided, however, that the foregoing in no way limits the Commonwealth’s or the Treasury’s right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 nor the Commonwealth’s or the Treasury’s ability to join the Firm as a third party defendant. Further, the term “other damages” shall not include, and in no event shall the Firm be liable for, damages for the Commonwealth’s or the Treasury’s use of Firm provided products or services, loss of Commonwealth or Treasury, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth or the Treasury. In no event shall “other damages” exceed the greater of \$100,000, or two times the value of the product or service (as defined in the contract scope of work) that is the subject of the claim. Section 11 sets forth the Firm’s entire liability under a contract. Nothing in this section shall limit the Commonwealth’s or the Treasury’s ability to negotiate higher limitations of liability in a particular contract, provided that any such limitation must specifically reference Section 11 of the Commonwealth Terms and Conditions. If there are provisions of the Commonwealth Terms and Conditions or the above modification that you believe are inconsistent with your duties under the Massachusetts Rules of Professional Conduct or other duties, please describe the issue and any proposed solutions in a question to the Treasury by the Deadline for Submission of Questions date (see Procurement Calendar above).

5.5. The answers to questions and information provided in the Response package are true and complete.

### **DISCLOSURES.**

Respondents must disclose all information requested below. Further, by signing this statement, your firm certifies that, if selected, it will disclose promptly, in writing, any changes to the information certified to or disclosed below.

1. State your firm’s name and address.
2. State the name and position of the officer completing this disclosure statement.
3. Describe your firm’s organizational structure (e.g. partnerships, corporation, etc.) and list any controlling stockholders, general partners or principals. Also list any subsidiaries, joint ventures, consultants, lobbyists, subcontractors or agents that have relationships with your firm and relate in any way to your proposed business with the Commonwealth.
4. **Lobbyists, Consultants, Agents.** Did your firm or will your firm, its related entities or any individual listed in response to Disclosure 3 above, provide, agree to provide or arrange to provide any compensation or benefit, direct or indirect to any individual or entity, including without limitation, lobbyists, consultants or agents, whether related or unrelated to your firm, for their services in your firm’s obtaining its engagement for the provision of services to the Commonwealth? If the answer is “Yes”, please provide the name and address of such individual or entity and a description of the services performed by them and the compensation or benefit.



5. **Fees, Commissions, Fee Splitting.** Has your firm, its related entities or any individual listed in response to Disclosure 3 above, have any arrangement with any related or unrelated individual or entity with respect to commissions or fees that would be received by your firm in connection with services provided to the Commonwealth? Has your firm ever engaged in any “splitting of compensation” arrangements including, but not limited to, finder’s fees, fee splitting, or other arrangements with respect to your firm’s proposed engagement with the Commonwealth? If so, please describe such arrangements whether or not any fees have actually been shared.
6. **Legal Proceedings.** Please disclose:
- 6.1. any pending legal proceeding, or judgments entered against your firm, its related entities, any of its partners or other principals, or any individual listed in response to Disclosure 3 above, within the last five years, involving malpractice or violations of law;
  - 6.2. any pending matters involving your firm with interests adverse to the Commonwealth;
  - 6.3. any current or pending investigation or inquiry, legal or disciplinary matters involving your firm by the SEC, U.S. Department of the Treasury or Internal Revenue Service (IRS), NASD, the Municipal Securities Rulemaking Board (MSRB), the Massachusetts Board of Bar Overseers or similar lawyer regulatory body in another state, any state Attorney General, or any other regulatory body.
7. **Future Relationships.** All future relationships, such as those described in this Disclosure Statement, must be disclosed in writing to the Treasury at such time such relationships are entered into.

### CERTIFICATION

I hereby certify that I am the Firm Signatory of \_\_\_\_\_ (the “Firm”) and the lead attorney on the engagement contemplated by this RFR, in connection with the Firm’s response to the foregoing RFR, and I hereby certify that all of the statements made in the above Legal Certification and Disclosure Statement are true and complete.

Respondent Firm: \_\_\_\_\_

(Printed Name of Respondent Firm)

By: \_\_\_\_\_

(Signature of Firm Signatory)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **APPENDIX 2**

### **Invest in Massachusetts Data Form – Instructions**

***Note: In your response, replace these instruction with the completed Invest in Massachusetts Data Form, which is attached as Exhibit B.***

Invest in Massachusetts. The Treasury encourages investment in our local economy and is committed to advancing the creation and preservation of jobs in the Commonwealth. Consequently, all responsive Bidders/Proposers **must** submit an *Invest in Massachusetts Data Form* (“IMD Form”).

Submission of an IMD Form is mandatory and required in order for the Bidder/Proposer to proceed forward in the evaluation process. Although all Bidders/Proposers are required to complete and submit the form, Bidders/Proposers are not required to complete “Part III – Certification” of the IMD Form in order to be deemed responsive and eligible for consideration.

The IMD Form will stand for 5% of the Bidder/Proposer’s technical evaluation. A Bidder/Proposer that submits an IMD Form certifying that 50% or more of the work-hours performed in connection with any contract arising out of its RFR Response will be performed in Massachusetts will be deemed “Advantageous.” A rating of “Advantageous” will earn the Bidder/Proposer credit on this component of the RFR evaluation. Any Bidder/Proposer unable to make such a certification will be deemed “Not Advantageous” and will be given no credit on this component of the evaluation.

Please be advised, however, that while responding to this section by submitting an IMD Form is a mandatory requirement, a Bidder/Proposer’s responses in the IMD Form, even if “Not Advantageous,” shall not prevent that Bidder/Proposer being awarded a contract if the Bidder/Proposer is deemed to be the most advantageous to the Commonwealth after the entire evaluation process.

### **APPENDIX 3**

#### **Treasury Supplier Diversity Program Plan (“TSDP”) Instructions**

***Note: In your response, replace these instruction with the completed Treasury Supplier Diversity Program Plan Form, which is attached as Exhibit C.***

The Commonwealth is committed to developing and strengthening Minority and Women Business Enterprises (M/WBEs) and expanding equal opportunity in the primary and any secondary industries affected by this RFR. Consequently, the Treasury requires all responsive Bidders to submit a *Treasury Supplier Diversity Program Plan Form* (“TSDP Plan Form”) with their response.

Submission of a signed TSDP Plan Form is mandatory and required in order for the Bidder to proceed forward in the evaluation process. A separate TSDP Plan Form should be submitted for each M/WBE that the Bidder does business with. Additionally, the TSDP Plan Form should be signed by an individual authorized to bind the Bidder. (Note: the Bidder must still submit a signed TSDP Plan Form even if the Bidder has no information to provide in connection with the TSDP Plan Form).

Credit may be earned on this component of the evaluation in one of two ways: (1) the Bidder is a Massachusetts SDO certified vendor, or (2) the Bidder has partnered with a M/WBE company in one of the three ways noted below. For purposes of this element of the Treasury’s implementation of the Supplier Diversity Program, the M/WBE cited by the Bidder need not be certified as a minority and/or women-owned business in or by Massachusetts. The Treasury will accept and treat equally any Bidder who can certify to and submit evidence of a relationship with any business that is certified in Massachusetts or any other state in the United States as minority and/or women owned.

The TSDP Plan Form will represent 5% of the Bidder’s technical evaluation. The Procurement Management Team (“PMT”) will rate responses as either “Advantageous” (receive credit) or “Not Advantageous” (will not receive credit) based on the data provided in the TSDP Plan Form. A Bid will be found to be “Advantageous” if either (1) the Bidder is Massachusetts SDO certified, or (2) the Bidder includes evidence of or a commitment to at least one (1) of the three (3) TSDP Components described below.

Please be advised that while responding to this section by submitting a signed TSDP Plan Form is a mandatory requirement, a Bidder’s responses in the TSDP Plan Form, even if “Not Advantageous,” shall not prevent that Bidder from being awarded a contract in the event that the Bidder demonstrates the overall “Best Value” for the procurement at the conclusion of the entire evaluation process.

Bidders must submit ***one form for each*** M/WBE relationship in the TSDP Plan Form submission. At the Bidder’s election, a narrative statement containing additional relevant information may be included to supplement the TSDP Plan Form and provide further details of the Bidder’s commitments. The submission of this narrative statement does not replace the requirement of the TSDP Plan Form.

All Bidders must follow the instructions set forth here and in the TSDP Plan Form, which detail the specific requirements relating to the prime vendor’s inclusion of M/WBEs.

**TSDP Components:**

1.

**Subcontracting:** Please note that all subcontracting partnerships require inclusion of that contract between the Bidder and the M/WBE subcontractor in the Bidder's bid package. Furthermore, if the subcontracted service is essential to the services being procured by this RFR, final approval of this relationship belongs to the Treasury.

2.

**Ancillary Uses of Certified M/WBE Firm(s):** If a Bidder commits to Ancillary Uses of certified M/WBE Firm(s) (firms certified in Massachusetts or another state) or companies that have applied for certification (in the Commonwealth or their own states) in the TSDP Plan Form, then the Bidder must provide a description of the ancillary uses of the certified M/WBEs. Ancillary services are not directly related to the scope of the solicitation or the core services or commodities being delivered to the Commonwealth. Ancillary commitments are for use of the M/WBE in the operational needs of the Bidder

3.

**Growth & Development:** If a Bidder commits to Growth and Development in their TSDP Plan, then they must submit a plan for education, training, mentoring, resource sharing, joint activities, and assistance that would increase industry capacity and the pool of qualified M/WBE certified companies.

The Treasury reserves the right to request from any Bidder(s) awarded a contract reports and/or confirmation of their commitment to their TSDP Plan and the information contained in their TSDP Plan Forms.

**Resources available to assist Prime Bidders in finding potential Massachusetts M/WBE partners can be found at: [SDP Procurement Resources and Guides](#) or [www.mass.gov/sdp](http://www.mass.gov/sdp).**

**APPENDIX 4**

**Attach Firm Resumes and Other Attachments**

**APPENDIX 5**

**Attach the Firm's Equal Employment Opportunity and Affirmative Action Policy**

**APPENDIX 6**  
**Attach Tax Certificate – If Applicable**

## **APPENDIX 7**

**Attach Completed Request for Taxpayer Identification Number  
and Certification (IRS Form W-9) – if Applicable**